



# City of Chula Vista

## Staff Report

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**File#:** 16-0372, **Item#:** 9.

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CONSIDERATION OF AN APPEAL BY THE CORRIDOR COALITION OF THE PLANNING COMMISSION'S DECISION TO ADOPT AN ADDENDUM TO URBAN CORE SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MONITORING AND REPORTING PROGRAM FEIR 06-01 AND APPROVING DESIGN REVIEW (URBAN CORE DEVELOPMENT) PERMIT DR15-0015 TO REDEVELOP THE SITE AT 795 THIRD AVENUE WITH 71 RESIDENTIAL CONDOMINIUM UNITS AND ASSOCIATED SITE IMPROVEMENTS AND TENTATIVE MAP PCS15-006 TO CONSOLIDATE TWO PARCELS INTO ONE CONDOMINIUM LOT FOR 71 RESIDENTIAL UNITS AND ONE COMMERCIAL UNIT FOR INDIVIDUAL OWNERSHIP ON 795 THIRD AVENUE, SUBJECT TO THE CONDITIONS CONTAINED THEREIN

RESOLUTION NO. 2016-177 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DENYING THE APPEAL BY THE CORRIDOR COALITION AND REAFFIRMING THE PLANNING COMMISSION'S ADOPTION OF THE ADDENDUM TO URBAN CORE SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MONITORING AND REPORTING PROGRAM FEIR 06-01 AND APPROVAL OF DESIGN REVIEW (URBAN CORE DEVELOPMENT) PERMIT DR15-0015 TO REDEVELOP THE SITE AT 795 THIRD AVENUE WITH 71 RESIDENTIAL CONDOMINIUM UNITS AND ASSOCIATED SITE IMPROVEMENTS AND APPROVAL OF TENTATIVE MAP PCS15-006 TO CONSOLIDATE TWO PARCELS INTO ONE CONDOMINIUM LOT FOR 71 RESIDENTIAL UNITS AND ONE COMMERCIAL UNIT FOR INDIVIDUAL OWNERSHIP ON 795 THIRD AVENUE, SUBJECT TO THE CONDITIONS CONTAINED THEREIN

### RECOMMENDED ACTION

Council conduct the public hearing and adopt the resolution.

### SUMMARY

Niki Properties, LLC (Applicant) has submitted applications for a Design Review Permit and a Tentative Map for redevelopment of the 1.05-acre site located at the northeast corner of Third Avenue and K Street (Site) with a mixed use, multi-family residential/commercial project known as Vista del Mar (Project). The Project Site is located within the C1 Third Avenue South District of the Urban Core Specific Plan area (see Attachment 1, Locator Map). The proposed Tentative Map would consolidate the Site (currently composed of two legal lots per the 1911 Map) into one condominium lot, which would allow the units to be sold individually. As the Project was being reviewed and evaluated by City staff for presentation to Planning Commission, two letters were submitted to the City as detailed below:

On April 15, 2016, City staff received a letter from Ms. Evelyn Heidelberg, a San Diego land use attorney, on behalf of Mr. Earl Jentz, a Chula Vista property owner. The letter contains a series of comments on various aspects of the Project, including the proposed buildings Floor Area Ratio

(FAR), compliance with development regulations, consistency with design guidelines, and the applicability of California Environmental Quality Act provisions. The comments allege that the Project does not comply with the City's regulations, and that certain findings cannot be made by the approving authority. City staff reviewed the letter and prepared a memorandum to the Planning Commission responding to the comments in the letter. The memorandum and the letter were presented to the Planning Commission at its hearing of June 22, 2016, and they are included as Attachment 12 of the Planning Commission Report (see Attachment 2 of this report). Staff's response to every comment on that letter demonstrates how the Project is consistent with and implements the vision, objectives and policies of the City's General Plan and is consistent with the development regulations and standards of the Urban Core Specific Plan. Furthermore, staff's response shows that all the findings required by the Project approval have been met and made.

On June 22, 2016, the day of the Planning Commission meeting, two letters were submitted to the Planning Commission. One of the letters was, once again, from Ms. Evelyn Heidelberg on behalf of Balboa Equity Capital, Inc. (Mr. Earl Jentz); the other letter was from Mr. Everett DeLano with the firm of DeLano & DeLano on behalf Mr. Jentz. The letter from Ms. Heidelberg again alleges that the Project is inconsistent with the Urban Core Specific Plan and that the required findings cannot be made. The letter from Mr. DeLano focuses on and alleges that the environmental document (Addendum to UCSP FEIR 06-01) prepared on the Project is inconsistent with the California Environmental Quality Act.

Staff reviewed and presented the proposed Project to the Planning Commission at its meeting of June 22, 2016 for consideration and recommended approval. As part of the Agenda packet, staff included a memorandum responding to Ms. Heidelberg's April 15th letter (see Attachment 12 of the Planning Commission Agenda Packet). The comments in the June 22nd letters from Ms. Heidelberg and Mr. DeLano were addressed by staff at the Planning Commission hearing. After considering all the information in the Agenda packet, staff's presentation, and all public testimony, the Planning Commission adopted the Addendum and approved the Project, subject to conditions.

On July 6, 2016, an Appeal (see Attachment 3 to this report) on the Planning Commission's decision was filed by the Corridor Coalition, Glenda de Vaney, Martha Coulson, and Earl Jentz (Appellants). The appeal is based on previously stated opposition to the proposed Project due to neighbors' concerns with the Project features. The Appeal states that (1) the statements and evidence relied upon by the Planning Commission were inaccurate; (2) there is new information not previously available that supports denial of the Project; and (3) the findings of the Planning Commission are not supported by the information provided.

Staff reviewed the Appeal and determined that (1) the decision of the Planning Commission was based on an accurate interpretation of the goals, objectives and policies of the City's General Plan, Urban Core Specific Plan, and the Chula Vista Municipal Code. (2) The Planning Commission considered all the information related to the Project, the goals, objectives, and policies of the City's General Plan, Urban Core Specific Plan, as well as the provisions of the California Environmental Quality Act. The Appeal does not provide any new reliable information supporting the Appellant's case. The Appeal is based on the same information that was presented by the Appellants to City staff and the Planning Commission at its meeting of June 22, 2016. The information presented to staff and to the Planning Commission does not support denial of the Project. And (3) the findings contained in the staff report to the Planning Commission and made by the Planning Commission

support approval of the Project. Staff finds that there is no basis for granting of the Appeal, and, therefore, staff concludes that the Appeal should be denied.

The remainder of this staff report describes the subject Site and Project, and provides an analysis of the Appeal and staff's detailed response to the Appellant's arguments. The detailed analysis of the Project and its consistency with the General Plan and Urban Core Specific Plan, including the required findings, is contained in the Planning Commissions agenda packet, which is attached to this staff report, as well as in the City Council Resolution attached to this report.

## **ENVIRONMENTAL REVIEW**

### **Environmental Notice**

The proposed Project was adequately covered in the previously adopted/certified Urban Core Specific Plan Final Environmental Impact Report and Mitigation Monitoring and Reporting Program FEIR 06-01. An Addendum to UCSP FEIR 06-01 has been prepared.

### **Environmental Determination**

The Development Services Director has reviewed the proposed Project for compliance with the California Environmental Quality Act (CEQA) and has determined that the proposed Project was adequately covered in the previously adopted Urban Core Specific Plan Final Environmental Impact Report and Mitigation Monitoring and Reporting Program FEIR 06-01, certified by the Chula Vista City Council in May 2007. The Development Services Director has further determined that only minor technical changes or additions to this document are necessary and that none of the conditions described in Section 15162 of the State CEQA Guidelines calling for the preparation of subsequent documents have occurred; therefore, the Development Services Director has prepared an Addendum to UCSP FEIR 06-01 (see Attachment 7 of the attached Planning Commission agenda packet).

## **BOARD/COMMISSION ACTION**

At its meeting of June 22, 2016, the Planning Commission voted 5-1-1 to adopt the Addendum to UCSP FEIR 06-01, approve the Design Review/Urban Core Development Permit Resolution and the Tentative Map Resolution to develop the subject Site with the proposed Project with the condition that the *"Applicant meet and confer with staff to develop and implement feasible and effective measures with respect to balconies on the 3rd, 4th and 5th floors of the Project with sight-lines onto adjacent residential yards to further address potential adverse effects on the privacy of occupants of adjacent residential properties to the satisfaction of the Development Services Director."* The audio of the June 22, 2016 Planning Commission meeting is available at the following link:

[http://cvapps.chulavistaca.gov/audio/PC/PC-06-22-2016.mp3?\\_ga=1.219794777.1781971708.1432660424](http://cvapps.chulavistaca.gov/audio/PC/PC-06-22-2016.mp3?_ga=1.219794777.1781971708.1432660424), which is incorporated herein by this reference. In addition, an audio CD of the June 22, 2016 Planning Commission meeting is available and also incorporated herein by the reference. (See Attachment 6 to this report concerning the audio recording and CD.)

## **DISCUSSION**

Project Site Location and Characteristics:

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The site for the proposed Project is located in the C1 Third Avenue South District of the UCSP. This District consists of several blocks of Third Avenue frontage that are located between I and L Streets (see Attachment 8 of the Planning Commission Agenda packet). The District has an area of approximately 53 acres. It consists primarily of professional offices north of J Street, and a mix of retail and professional office uses south of J Street. Among these office and retail uses are six sites, that include, a residential development mixed with commercial fronting on Third Avenue including one single-family home, small and mid-size condominium complexes, and a senior housing complex that contains 75 residential units. Behind these frontage developments are single-family homes (east of Third Avenue along Church Avenue) and multi-family complexes (west of Third Avenue).

The Site for the proposed Project consists of two assessor's parcels (573-371-2300 and 573-371-1200) with a total area of 45,738 square-feet (1.05 acres). The Site is currently occupied by three buildings with a combined area of approximately 20,450 square-feet, which were built during the 1950's and 1960's, and are currently occupied by a martial arts gymnasium, an insurance office, a botanical sales store, and a chiropractor's office; one of the buildings is currently vacant. The existing structures would be demolished to allow construction of the proposed Project. The Site is flat, has a rectangular/L-shape form, and fronts along Third Avenue, K Street and backs onto Church Avenue. The Site is located in the fully urbanized area of the City that is part of the Urban Core. The Site is surrounded by a variety of commercial retail, restaurant and office uses along Third Avenue; across K Street from the Site is a bank; and to the north and east across Church Avenue are single-family homes (for more details see table with land use and zoning information on page 7 of the Planning Commission Report).

### Project Description

The Project consists of the redevelopment of the 45,738 square-foot property with a mixed-use, 3 to 5-story (34 to 60 feet in height) structure, with 71 residential condominium units (1 and 2 bedrooms with an area between 736 sq. ft. and 1,200 sq. ft.), a 1,770-square-foot residential fitness center, 1,004-square-feet of lobby and elevator space, 2,572-square-feet of residential lounge space, and 616 square-feet of commercial space (see proposed Project plans in Attachment 9 of the Planning Commission Agenda packet). The Project also includes the construction of 142 parking spaces (subterranean, street level and enclosed), 17,646 square-feet of common and private open space, and approximately 8,500 square-feet of landscaped space, as well as the associated access and circulation areas. The use distribution within the building structure is as follows:

- Underground floor - enclosed residential, commercial, and guest parking (74 spaces);
- First floor - enclosed residential parking (68 spaces), residential fitness center, lobby/elevators, residential lounge space, and commercial space which fronts on the 1,700 squared-foot public plaza at the Third and K corner; trash, recycling, and bulky items deposit;
- Second floor - 21 residential units and landscaped terrace;
- Third floor - 21 residential units;
- Fourth floor - 17 residential units; and
- Fifth floor - 12 residential units.

Part of the proposed open space is in the form of balconies in all units and a large terrace on the second floor of the building. The outside perimeter of the terrace contains planters with trees and shrubs to screen the views from the structure to the neighboring residences. A six-foot high concrete

decorative wall will be constructed along the northern and eastern property edges of the residential properties adjacent to the Project Site. A 10 to 13-foot buffer inside the property line will be landscaped with trees and shrubs. The Project will also include the excavation and export of 9,750 cubic yards of soil during the grading phase for the development of below-grade parking.

#### Public Participation

The Project has gone through an intense review process by the City as well as by the public. Given the interest expressed by the public as a result of the Notice of Application, two neighborhood meetings were held by the Applicant and City staff on the proposed Project. The first meeting was held on October 15, 2015 at Chula Vista High School and approximately 50 people attended the meeting. A second meeting was held on December 16, 2015 at Hilltop Drive Elementary School, and approximately 70 people attended this meeting. The comments received by City staff at these meetings expressed both concerns with as well as support for the Project. Comments on the Project continued to be forwarded to City staff subsequent to the meetings. The Project Applicant responded by making significant changes to the Project in order to address the concerns from the public as well as to ensure that the Project was consistent with all the objectives and policies of the City's General Plan and the development standards and regulations of the Urban Core Specific Plan. A detailed description of the public participation process and the evolution of the Project is included in the Planning Commission report (pp. 3 and 4), attached to this report.

#### Appeal

On Friday, July 1, 2016, the law firm of DeLano & DeLano submitted an Appeal of the Planning Commission's June 22nd decision on behalf of the Appellants. After reviewing the Appeal documents, City staff determined that the Appeal was incomplete because the disclosure statement from one of the Appellants, Ms. de Vaney, was missing. The required disclosure statement was submitted to staff on Wednesday, July 6, 2016, still within the Appeal deadline of July 7th.

#### ANALYSIS:

Staff has reviewed and analyzed the Appeal and offers the following analysis. The Appellants indicate they are appealing "the procedure, actions and approval" of the Project and Addendum by the Planning Commission because:

- a) The statements and evidence relied upon by the Planning Commission were inaccurate;
- b) There is new information not previously available that supports denial of the Project; and
- c) The findings of the Planning Commission are not supported by the information provided.

Staff's response to the Appeal is that these three statements, as basis for the Appeal, are unsupportable and do not represent cause to reverse the Planning Commission's decision. Staff has analyzed and addressed the three statements below. a) The first and third statements are unsupported because the Appellants do not provide any new specific evidence indicating that the statements and findings relied upon by the Planning Commission are inaccurate. Except for allegation's concerning geologic evaluation and access to records for the Project, Appellant's just reiterate what they proffered at the Planning Commission hearing, which staff rebutted to the Planning Commission's satisfaction. Staff's analysis and all the information presented to the

Planning Commission in the agenda packet are accurate and based on the vision, objectives and policies of the City's 2005 General Plan and the development standards, regulations, and design guidelines contained in the Urban Core Specific Plan. As shown in the attached Planning Commission Agenda Packet (Report, Resolutions, and Attachments), incorporated herein by this reference, the proposed Project is consistent with the vision, objectives and policies of the General Plan and the regulations of the Urban Core Specific Plan. The General Plan and the Urban Core Specific Plan envision the C1 Third Avenue South District as an area with a balanced mix of commercial and residential uses that contribute to create a vibrant and attractive area. Today, the majority of the parcels within the C1 District are developed with retail or office uses. There is little residential development within the District, which is why the General Plan calls for additional residential development within the District.

Additionally, the proposed Project has been designed to meet the development standards, regulations and design guidelines of the Urban Core Specific Plan, as detailed in page 8 of the Planning Commission Staff Report. Regarding the building's FAR, the Project provides the three amenities required by the Urban Core Specific Plan, as described and analyzed in the Planning Commission Staff Report, as such, the Planning Commission made the required findings and approved the proposed FAR. The provided amenities, and the exception therefor, allow the Project to provide all the elements to represent a well-rounded and well designed Project which meets the goals and objectives of the General Plan and the Urban Core Specific Plan. The Project is well planned, incorporating the principals of Smart Growth (mix of uses, compact building design, range of housing opportunities, walkable neighborhoods, etc.), "Complete Streets" (safe and accessible for all users, reduces traffic congestion, connected to transit), and resource conservation.

b) The Appellants allege in their second statement that "there is new information not previously available that supports denial of the Project." As discussed above, the Appeal provides very little in terms of new information. The Appeal packet includes the following documents:

- Appeal Application Form
- Glenda de Vaney's Disclosure Statement
- Earl Jentz's Disclosure Statement
- Martha Coulsen's Disclosure Statement
- Appeal Letter signed by Mr. Everett DeLano with the following attachments:

1. Letter to City from Evelyn Heidelberg (4/15/16).
2. Letter to City from Everett DeLano (6/22/16).
3. Letter and materials to City from Evelyn Heidelberg (6/22/16).

After reviewing the Appeal packet, staff has determined that the Appeal application form, Appeal letter and disclosure statements are the only new documents in the Appeal packet. And, as discussed above, except for allegation's concerning geologic evaluation and access to records for the Project (allegation's included in the Appeal letter), Appellant's just reiterate what they proffered at the Planning Commission hearing, again, which staff rebutted to the Planning Commission's satisfaction. There is no other new information. The three attachments that are presented as the "basis or evidence" for the Appeal are documents that were submitted to the City on April 15, 2016 and to the Planning Commission on June 22, 2016. As indicated earlier in this report, the letter from Ms. Heidelberg was received by City staff in April and was completely responded to by staff, i.e., the

allegation's in Ms. Heidelberg's letter were completely addressed. The April 15th letter and staff's response memorandum were submitted to the Planning Commission as part of its agenda packet (please see Attachment 12 of the Planning Commission packet) for the Commission's consideration and approval of the Addendum and the Project that night. The other letters from Ms. Heidelberg and Mr. DeLano submitted to the Planning Commission the night of the hearing (June 22nd) were also considered by the Planning Commission as part of its decision to adopt the Addendum and approve the Project. As part of the deliberations at the meeting, City staff completely addressed the contents of the two letters. Since the responses to the June 22nd letters submitted to the Planning Commission were delivered verbally by staff at the hearing, staff provides the following written responses for Council's consideration.

The June 22nd letter from Ms. Heidelberg represents an attempt to rebut staff analysis contained in the Report to the Planning Commission. The basic arguments in Ms. Heidelberg's letter are once again that the findings for the Project's FAR cannot be made because the Project is not consistent with the General Plan's vision, objectives and policies, and that the Project does not meet the Urban Core Specific Plan's development standards, regulations and design guidelines. Staff has shown in detailed form in the Planning Commission's Staff Report and Resolutions, which are incorporated herein by this reference, that all required findings for the Project have been made and the development standards, regulations, and design guidelines have been met by the Project. In fact, staff analysis, determinations, and conclusion on the Project have been confirmed and ratified by the Planning Commission's decision to adopt the Addendum and approve the Project based on the information and analysis contained in the Staff Report, Resolutions and Attachments.

The June 22nd letter from Mr. DeLano focuses on and attempts to challenge the Project's approval from the perspective of the CEQA. First, the letter broadly contends that the Project is not "consistent with the program, plan, policy or ordinance for which an environmental impact report has been prepared and certified and with applicable local land use plans and zoning." Second, Mr. DeLano uses this incorrect assumption to conclude that the Project could not be covered by the adopted EIR for the Urban Core Specific Plan. As indicated above, the Project is consistent with the vision, objectives and policies of the City's General and it is consistent with the development standards, regulations and design guidelines of the Urban Core Specific Plan (see attached Planning Commission Report). As indicated in the Environmental Section of this report, the Development Services Director has reviewed the proposed Project for compliance with the CEQA and has determined that the proposed Project was adequately covered in the previously adopted Urban Core Specific Plan Final Environmental Impact Report and Mitigation Monitoring and Reporting Program FEIR 06-01, certified by the Chula Vista City Council in May 2007. The Development Services Director has further determined that only minor technical changes or additions to this document are necessary and that none of the conditions described in Section 15162 of the State CEQA Guidelines calling for the preparation of subsequent documents have occurred; therefore, the Development Services Director prepared an Addendum to UCSP FEIR 06-01 (see Attachment 7 of the attached Planning Commission agenda packet).

Mr. DeLano's letter cites a series of Mitigation Measures from the EIR prepared for the Urban Core Specific Plan and claims that the Project is not consistent with those Mitigation Measures. Following is a summarized list of issues in the letter (*in italicized font*) followed by a staff response as to how that issue was addressed as part of the Project review process. The below responses were provided verbally at the Planning Commission hearing.

#### Noise

*"UCSP Mitigation Measure 5.9-4 requires projects with commercial uses to "demonstrate compliance with the existing performance standards in the City's Noise Ordinance" and requires "compliance with the mixed-use provisions of Chapter VI of the UCSP" The Project has failed to demonstrate such compliance."*

A noise study was prepared by qualified acoustical consultant Eilar and Associates, dated November 19, 2015. The noise study indicated that the Project will meet all of the existing performance standards in the City's Noise Ordinance and not cause any noise impact either on or off site. The noise study addressed interior sound transmission and determined that the Project complies with the mixed-use provisions of Chapter VI of the UCSP and that, again, there will be no noise impact. The conclusions of this noise study were summarized in the addendum to EIR-06-01 that was prepared for the Project.

#### Light and Glare

*UCSP Mitigation Measure 5.2.5-2 requires the City to identify the provisions of the UCSP which shall be included in the conditions of approval in order to reduce potential light and glare impacts to below significance." The draft resolutions of approval fail to do so.*

The Design Guidelines of the UCSP call for exterior lighting to not be excessively bright and to be addressed in a project lighting plan. The USCP does not provide specific lighting design details for the Corridors District. Section 17.28 of the CVMC requires that lighting be shielded and not shine directly onto adjoining residential properties. Condition No. 15 of Project approval requires the submittal of a lighting plan for City review and approval prior to the issuance of building permits for the Project, to demonstrate consistency with the UCSP and Section 17.28 of the Municipal Code.

#### Existing Building Historical Significance

*"UCSP Mitigation Measure 5.3.5-4 requires a determination of historical significance "for those structures 45 years or older." And if a structure is found to be historically significant, additional mitigation measures must be implemented, The staff report indicates the three buildings on-site were built during the 1950's and 1960's," Despite this fact, no historical analysis was performed."*

The City's historical expert conducted an analysis of the existing buildings and determined that existing structures on site are not historically significant.

#### Traffic

*"UCSP Mitigation Measure 5.8.5-4 requires that "the traffic assessment prepared to quantify the projects' potential traffic impacts will also identify how alternative modes of transportation will be accomplished." The Project's traffic assessment failed to do so."*

A traffic study was performed for the Project indicating that there will be no adverse traffic impacts associated with the Project. It is important to note that although a traffic study was not required for the Project the applicant submitted a traffic study to address neighbor concerns. The site is conveniently located in proximity to a bus stop for Route 929, which runs along Third Avenue and provides direct access to working and shopping opportunities in Downtown San Diego. The project incorporates smart growth features such as high densities in proximity to transit, wide sidewalks,

street trees, and other pedestrian friendly features such as street furniture, to encourage pedestrian activity and use of alternative modes of transportation. Condition No. 14 of Resolution DR15-0015 requires the Project Applicant to install a "Keep Clear" striping detail at the combined Project/Bank of America driveway to ensure that vehicles stopped at Third Avenue and queuing westbound on K Street do not block the Project driveway.

#### *Public Services*

*"UCSP Mitigation Measure 5.11.1-1 requires each project to "demonstrate that significant impacts to police services resulting from an individual project are addressed" and requires each project to be evaluated "for adequate access for police vehicles... and integration of Crime Prevention Through Environmental Design (CPTED) techniques...." "The Project has failed to demonstrate such compliance."*

The project site is fully accessible for all emergency vehicles including police cars. The project site can be accessed by emergency vehicles directly from Third Avenue. The Project provides an on-site parking garage that will be accessible to police. Vehicular access to the site is fully open, as there will not be a driveway gate. Numerous pedestrian access points are provided on the site, for police officers who are on foot. The project incorporates the CPTED design principals of "eyes on the street" through the provision of windows and balconies on all sides of the project, as well as "territorial enforcement" through the creation of a sense of home territory and pride of ownership for residents. In addition, the Project will pay all applicable impact fees, which will address public safety.

#### *Preparation of Secondary Studies*

*"UCSP EIR Section 2.3.3 provides: as each new development is proposed, a Secondary Study will be prepared to determine if the [UCSP] EIR adequately address the potential environmental impacts of the proposed development." UCSP EIR at 2-11. The City has failed to prepare a Secondary Study,"*

A secondary study was performed for the Project and is in the Project file. Even though a secondary study was completed, which indicated that no additional environmental review would be required, out of an abundance of caution and to be sure to fully address any potential environmental issues, staff did require the preparation of an Addendum to the original EIR. All technical studies associated with the Addendum are part of the secondary study for the Project.

#### *Construction Noise*

*"Beyond these inconsistencies, the Project will lead to significant impacts not adequately addressed in the UCSP EIR. For example, the Addendum acknowledges that "adjacent residential population to the east and commercial properties to the north and south may be exposed to excessive construction noise..." Addendum at 7. But there is no analysis of these issues because, the Addendum claims, "construction projects are Short term in nature." Id. The mere fact that construction impacts may be temporary does not make them insignificant, See Berkeley Keep Jets Over the Bay Comm. v, Board of Port Commissioners" (2001 ) 91Cal.App,4th 1344; 1380-81."*

Construction noise impacts were addressed in the noise study. The noise study addresses typical noise sources emanating from construction sites such as this one, and provides expected decibel levels for such projects. The project would not be unusual in terms for construction noise generation. The noise study points out that the City Noise Ordinance limits construction noise to the hours of 7 am to 10 pm on weekdays, and 8 am to 10 pm on weekends. Construction noise is not considered

to be a permanent impact and is exempt from the City noise ordinance. As such, the noise study determined that there would not be an impact associated with noise.

#### *Air Quality/Green House Gases*

*"The Addendum and UCSP EIR do not account for existing air quality conditions. Assumed compliance with air emissions requirements does not ensure that impacts will not be significant. Kings County Farm Bureau , City of Hanford (1990) 221 CalApp.3d 692, 718."*

*"On April 29, 2015 Governor Brown issued Executive Order B-30-15; which establishes a new interim statewide greenhouse gas emission reduction target to reduce greenhouse gas emissions to 40 percent below 1990 levels by 2030. Neither the Addendum nor the UCSP EIR address compliance with Executive Order B-30-15."*

The project is consistent with the Regional Air Quality Strategy (RAQS) for the San Diego region. A greenhouse gas assessment was performed for the project and the project was found to not generate a significant amount of GHG and a determination of no impact was made.

#### *Cumulative Impacts*

*"Were other projects to develop at the levels and intensity associated with the Project, the cumulative impacts would be substantial. These impacts were not analyzed in the UCSP EIR, See City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452 ("even projects anticipated beyond the near future should be analyzed for their cumulative effect").*

Cumulative impacts were analyzed in the UCSP EIR. Since the project is consistent with the density analyzed in the UCSP EIR there is no cumulative impact associated with the project.

In addition to the above, there are two statements in the Appeal letter that could be construed as new information that is part of the Appeal. One statement indicates that the City "failed to provide copies of records;" the other indicates that the Geotechnical Report prepared for the site "fails to meet" UCSP EIR Mitigation Measure 5.4.5-1. These two statements are inaccurate.

In regard to the records requested by the Appellant's representative, Mr. DeLano contacted staff for the first time in the middle of June 2016 to make an appointment to review the Vista del Mar Project files. Staff met with Mr. DeLano on June 15 at 11:30 a.m. at the Public Services Counter, and provided a file with the Project plans and another file with the technical studies prepared for the Project. Mr. DeLano reviewed the plans and asked if he could have copies of the studies. Staff responded that the studies were available for him to review there, and that copies of some of the studies could be obtained through a Public Records' Request. Staff asked Mr. DeLano specifically if he wanted to review the studies at that moment; he responded he did not.

A few days after meeting with City staff, Mr. DeLano requested information from staff related to the Project. At his request, staff provided a link to the Urban Core Specific Plan Environmental Impact Report, copy of the Planning Commission Agenda packet, including some of the technical studies that were included as attachments to the Planning Commission Staff Report. Mr. DeLano asked for copies of technical studies that were bound and had the preparer's seal, which staff took to be a proprietary seal that required permission from the preparer to copy. Staff indicated to Mr. DeLano that technical studies could not be released by City staff without the permission from the preparer, but

that he could make copies of the studies if he got permission from the studies' preparers. On June 21st, arrangements were made for Mr. DeLano to send an agent to make copies of the studies that had not been delivered to him. A meeting was setup to receive the agent and provide the studies for copying at the City offices; the agent did not show up at the meeting with staff. At that point the City Clerk got involved and started looking into whether studies with the preparer's seal could be released. Unfortunately, due to the Planning Commission hearing on the Project being scheduled for the next day, copies of the documents could not be timely provided to Mr. DeLano prior to the hearing. Importantly, however, the Clerk's office offered to make the studies available for Mr. DeLano to review in the Clerk's office, which Mr. Delano took advantage of prior to the Planning Commission hearing.

The statement related to the Geotechnical Report is also inaccurate in concluding that the Report fails to meet the requirements of Mitigation Measure 5.4.5-1 of the UCSP EIR. First, the Geotechnical Report was prepared by professional engineering consultants pursuant to industry standards/requirements, and it was submitted to City staff for review along with the Project plans. Second, the Report was reviewed by City staff pursuant to established processes and based on established requirements. Third, normally the review process is divided into two stages: the first stage of the review is during the conceptual review and approval of the Project plans; the second stage is at the building permit process, once the technical construction drawings for the Project have been prepared. At this stage of the process and prior to the issuance of building permits, the Project Applicant and consultants are required to finalize and submit all the complete technical studies. In fact, this process and requirement is memorialized in the resolutions presented to the Planning Commission on June 22nd. Resolution PCS15-0006's condition No. 14 requires the Applicant to submit updated copies of the Drainage Study, Water Quality Technical Report (WQTR), and Geotechnical Report with the submittal of Grading Plans.

Attachment No. 4 of this report is a letter from Mr. Benjamin Serna, PD, GE (Geotechnical Engineer) with Group Delta, who prepared the Geotechnical Report on the proposed Project. Mr. Serna's letter is in response to the Appellant's inaccurate claim that the Geotechnical Report does not meet the requirements of Mitigation Measure 5.4.5-1. The letter indicates that the 1) report meets the requirements of the cited Mitigation Measure; 2) preliminary geotechnical analysis "are routinely performed using existing geotechnical data (such as soils borings); 3) "based on the preliminary results of our preliminary geotechnical assessment, liquefiable, compressive, and expansive soils have not been identified as significant considerations for the project"; 4) "these preliminary findings will be further evaluated based on a site-specific geotechnical investigation to be performed in support of the final design prior to building permit application submittal."

## **CONCLUSION**

As previously concluded and indicated in the Planning Commission Staff Report, Vista del Mar is the first mixed-use (commercial/residential) project within the C1 District that has been submitted to the City for approval since the Urban Core Specific Plan was originally approved in 2007 (the first approved and built project was the retail market at the corner of Third Avenue and J Street). As such the Project represents the first opportunity in many years for development of a residential/commercial project in this part of the City. The Project will provide new investment, modern housing facilities and site improvements that will contribute to, revitalize and enhance the Site and the neighborhood. The Project will provide new for-sale and affordable (7 units) multi-family housing that will improve the

housing mix and enhance residential opportunities in the neighborhood. The Project's central location in the City and along one of the City's important corridors will provide convenient access for residents to jobs, transportation, and a variety of goods and services in close proximity.

The Site will be developed with a quality project that is consistent with the vision, objectives and policies of the General Plan. The Project has been designed to meet the development regulations and design guidelines of the Urban Core Specific Plan. Regarding the buildings FAR, the Project has provided the three amenities previously described and analyzed thereby meeting the requested exception to the base FAR. The provided amenities and the exception allow the Project to provide all the elements to represent a well-rounded and well designed Project to meet the goals and objectives of the General Plan and Urban Core Specific Plan. The Project is well planned, incorporating the principals of Smart Growth (mix of uses, compact building design, range of housing opportunities, walkable neighborhoods, etc.), "Complete Streets" (safe and accessible for all users, reduces traffic congestion, and connected to transit), and resource conservation. It is designed to respect and blend with the community character, local history, and environment. The proposed Project will re-activate the street and contribute to improve the neighborhood and create residential and business activity in this part of the City.

Staff has reviewed and analyzed the Appeal and has determined that the Appeal has no merit and should be denied based on the following:

- 1) The decision of the Planning Commission was based on an accurate interpretation of the goals, objectives and policies of the City's General Plan, Urban Core Specific Plan, and the Chula Vista Municipal Code.
- 2) The Planning Commission considered all the information and testimony related to the Project, the goals, objectives, and policies of the City's General Plan, Urban Core Specific Plan, as well as the provisions of the California Environmental Quality Act. The Appeal does not provide any new reliable information supporting the Appellant's case.
- 3) The findings contained in the Staff Report to the Planning Commission and made by the Planning Commission fully support approval of the Project.

Based on this conclusion and all the information contained in this report, resolutions and attachments, staff finds that there is no basis for granting of the Appeal, and, therefore, staff concludes that the Appeal should be denied. Furthermore, staff recommends that the City Council adopt the resolution presented with this report and deny the Appeal and reaffirm the Planning Commission decision to adopt the Addendum and approve the Project.

#### **DECISION-MAKER CONFLICT**

No Property within 500 feet

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(11), for purposes of the Political Reform Act (Cal. Gov't Code §87100, *et seq.*).

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In addition, staff has conducted a decision maker conflict of interest review concerning Councilmember Miesen and has determined that a potential conflict of interest may exist because it may be reasonably foreseeable that a financial effect on a business entity in which Councilmember Miesen has a financial interest may be material.

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

### **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Project implements the Economic Vitality, Healthy Community, Strong and Secure Neighborhoods, and a Connected Community Strategic goals because the Project represents a significant investment in the construction of the mixed use building and all its infrastructure; the construction of the Project will provide market-rate and affordable housing in a time of housing shortages, particularly in the western part of the City; the future residents will contribute to support the existing businesses on Third Avenue, near the Project; more housing and people will create activity and vibrancy in this part of town; the Project also contributes to the City's Strategic Goals by providing construction of a development project that is consistent with the goals and objectives of the City's General Plan and the development standards of the Urban Core Specific Plan in a manner that ensures public health and safety of the community.

### **CURRENT YEAR FISCAL IMPACT**

There are no fiscal impacts during the current fiscal year from the processing of the project. All costs for the project processing including the appeal are covered by the deposit accounts paid for by the applicant. The Appellant paid the required filing fee for the Appeal. Costs associated with the processing of future implementing permits, will also be covered by permit fees or deposit accounts.

### **ONGOING FISCAL IMPACT**

The Project is privately owned and operated and will not create future expenditures for the City associated with approval of the item, including facility maintenance and operations.

### **ATTACHMENTS**

1. Locator Map
2. Planning Commission Agenda Packet
3. Appeal from the Corridor Coalition
4. Response Letter on Geotechnical Report
5. City Council Resolution
6. Information concerning the audio recording and CD of the June 22, 2016 Planning Commission Meeting

*Staff Contact: Miguel Z. Tapia*